IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 7394 of 1999

For Approval and Signature:

HON'BLE MR JUSTICE KS JHAVERI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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ADMINISTRATIVE OFFICER & 1 - Petitioner(s)

Versus

KHATRI ARVINDABEN BHARATKUMAR ALL GUJARAT KAMDAR KARMACHARI - Respondent(s)

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Appearance :

MR D R DAVE for Petitioner No(s).: 1,2.

MR KR KOSHTI for Respondent No(s).: 1.

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CORAM :HON'BLE MR JUSTICE KS JHAVERI

Date : 11/07/2005

ORAL JUDGMENT

1.0 The petitioners have challenged the order dated

21.05.1999 passed by the Presiding Officer of the Special Labour Court, Ahmedabad, in Reference (LCITAT) No.178 of 1997, whereby the said reference was allowed.

2.0 The brief facts of the case are that the respondent herein was working as a contingency Messenger in the school run by petitioner no.1 herein. The respondent approached the City Civil Court with a view to continue him in the service and for other demands by filing a suit. The City Civil Court passed an order in favour of the petitioner, and therefore, Appeal from Orders were preferred before this Court by the respondent. The said Appeals were also decided in favour of the petitioners.

2.1 Thereafter, the respondent preferred Civil Appeals before the Hon'ble Supreme Court and the Hon'ble Supreme Court by order dated 03.10.1998 directed that the appellant, i.e. the respondent herein, shall continue to hold the Post which he was holding till 30.10.1988 and further directed that the trial Court shall dispose of the suit.

2.2 In view of the above, the services of the respondent were terminated w.e.f. 30.11.1988. The respondent preferred a reference before the Labour Court challenging the said

order. The Labour Court, Ahmedabad, by judgment and order dated 21.05.1999 which was published by way of a Notification on 22.07.1999, allowed the said reference.

3.0 Mr. D R Dave learned advocate for the petitioners has submitted that the respondent herein was Petitioner No.32 before the Hon'ble Supreme Court, and therefore, the Labour Court has committed an error in entertaining the reference between the parties. He has submitted that the Posts in question were abolished by the petitioners pursuant to the Resolution of the Committee on 31.12.1988 which has been placed on record.

3.1 Mr. Dave has submitted that apart from the above, similarly situated persons had approached the Industrial Tribunal by way of reference being Reference (IT) No.92 of 1989 which was also rejected by the Industrial Tribunal by order dated 17.06.1991. He has, therefore, submitted that the Labour Court has committed serious error by entertaining the reference preferred by the respondent.

4.0 I have heard learned counsel for the parties and perused the documents placed on record. The issue between the parties was agitated before the Hon'ble Supreme Court by way of filing Civil Appeal and the Hon'ble Supreme Court

by order dated 03.10.1988 issued the following directions;

> "After the appeals are heard for some time, learned counsel for both the parties submit that the appellants shall be allowed to continue in the service as office Peons on the existing terms till 30th November, 1988 and that the appellants shall vacate the posts on the expiry of 30th November, 1988. They further submit that if the respondent, Nagar Prathmik Sikshan Samiti proposes to fill up the posts presently held by the appellants the cases of the appellants shall also be considered along with others who have applied or may apply for those posts. They further state that the suits out of which these appeals arise may be treated as having been withdrawn. We make an order accordingly. The appellants shall continue to hold the posts which they are now holding till 30th November, 1988. The trial Court shall dispose of the suits out of which these appeals have arisen as withdrawn.
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> If the respondent-Nagar Prathmik Sikshan Samiti proposes not to fill up the posts they are at liberty not to fill up the posts.
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> If any person is appointed on contingency basis by respondent No.1 hereafter he shall be paid the minimum pay payable to a person who is regularly appointed in a comparable post for the period he has worked."

5.0 The contention which has been raised before this Court that the issue in question was concluded before the Hon'ble Supreme Court, was also pointed out before the Labour Court. In spite of that, the Labour Court has held that the petitioners have not complied with the order of the Hon'ble Supreme Court and reinstatement order came to be passed.

6.0 From the order of the Hon'ble Supreme Court, it is clear that whenever the petitioners propose to fill up the said Posts presently held by the appellant, i.e the respondent herein, the case of the appellant shall also be considered along with others, who have applied or may apply for the said Posts. It was also made clear that the suits out of which the appeals had arose may be treated as having been withdrawn.

7.0 Hence, it is clear that the Labour Court has committed an error in entertaining the reference since the issue was concluded by the order of the Hon'ble Supreme Court.

8.0 In the result, this petition is allowed. The order dated 21.05.1999 passed by the Presiding Officer of the Special Labour Court, Ahmedabad, in Reference (LCITAT) No.178 of 1997, is quashed and set aside. Rule is made absolute with no order as to costs.

(K. S. JHAVERI, J.)

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